

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1832V

Filed: November 3, 2022

UNPUBLISHED

RAYMOND P. BRADY,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Master Horner

Damages Decision Based on Proffer;  
Diphtheria, Tetanus, acellular  
Pertussis (DTaP) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA); Adhesive  
Capsulitis

*Michael J. Burns, Bowen & Burns, Southampton, PA, for petitioner.*

*Matthew Murphy, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

On December 3, 2019, Raymond Brady filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that he suffered adhesive capsulitis and a shoulder injury related to vaccine administration (“SIRVA”) as a result of his diphtheria, tetanus, acellular, pertussis vaccination on December 7, 2016. (ECF No. 1.)

On January 26, 2022, a ruling on entitlement was issued, finding Petitioner entitled to compensation for his left SIRVA. (ECF No. 45.) On November 3, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$70,000.00 in pain and suffering and \$21,133.03 for past unreimbursable expenses for a total of \$91,133.03. (ECF No. 60.) In the Proffer, respondent represented that petitioner agrees with the proffered award. (*Id.*) Based on the record as a whole, I find that petitioner is entitled to an award as stated in the Proffer.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

Pursuant to the terms stated in the attached Proffer, **I award petitioner a lump sum of \$91,133.03, representing \$70,000.00 in compensation for pain and suffering and \$21,133.03 for past unreimbursable expenses, in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Daniel T. Horner**  
Daniel T. Horner  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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) ECF  
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**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On December 3, 2019, Raymond P. Brady (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that he suffered injuries including adhesive capsulitis and a shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of a Diphtheria, Tetanus, and Pertussis (“DTaP”) vaccine he received on December 7, 2016. Petition at 1, 4. On January 25, 2022, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a SIRVA Table injury, and on January 26, 2022, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 44; ECF No. 45.

**I. Items of Compensation**

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$70,000.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that he incurred past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$21,133.03. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Special Master's decision and the Court's judgment award the following<sup>1</sup>: a lump sum payment of \$91,133.03, in the form of a check payable to petitioner.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Raymond P. Brady:	<b>\$91,133.03</b>
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Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO  
Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Deputy Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

DARRYL R. WISHARD  
Assistant Director  
Torts Branch, Civil Division

/s/ Matthew L. Murphy  
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DATED: November 3, 2022